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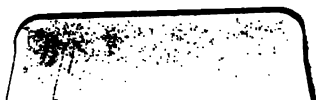
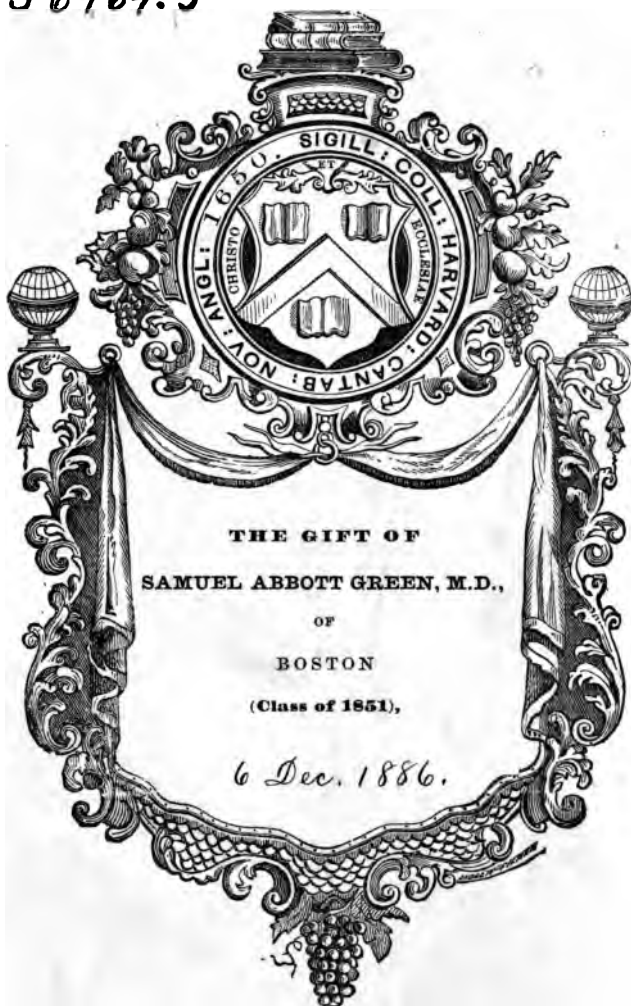
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LETTER

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TO THE

**Secretary of the Interior**

ON

**The Affairs of Utah, Polygamy,  
"Cohabitation," &c.**

BY

GEORGE TICKNOR CURTIS.

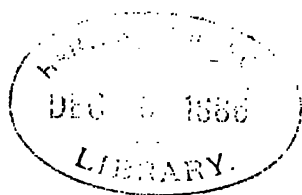
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WASHINGTON, D. C., November 1, 1886.

To the Hon. L. Q. C. LAMAR,  
*Secretary of the Interior.*

SIR : No apology can be necessary for this communication, or for the public manner in which it is addressed to you. It concerns a matter of the utmost importance to the people of the United States, and to that portion of their affairs which is under your official charge. The recent report of Governor West, Territorial Governor of Utah, dated at Salt Lake City, and the last report of the "Utah Commissioners," both of them official documents addressed to the Secretary of the Interior, seem to me to call for examination and comment. They open the policy of this government towards the Mormons of Utah, as it has been pursued for the past few years, and they advocate measures of still greater severity in the same direction. I have felt prompted to give a great deal of attention to the measures pursued towards the Mormons of Utah, on account of the principles of civil and religious liberty involved ; and I have given a great deal of study to the laws that have been enacted respecting them, and to the policy which is pursued towards them. Some of the convictions which I entertain I desire respectfully to submit to you.

In the course of the past summer I had occasion, in writing to President Taylor, the head of the Mormon Church, to ask a certain question, and to request him to allow me, in case I should find it necessary, to publish his answer. I received from him, under the date of August 3, 1886, a letter, from which I now, with his permission, make an extract that is, I think, deserving of the serious attention of all who are concerned in administering the Federal Government, and more especially of the Secretary of the Interior. You will perceive, sir, that the answer was given most directly and plainly, and

that it came from one who is entitled to speak the sentiments and feelings of the Mormon people of Utah. He gives to the imputation of disloyalty just the denial that was to be expected from him. The reason why I put to him the question which he answered was because I have long foreseen, from the spirit that prevails among the non-Mormons of that Territory, and from the tendencies that are manifested in Congress to allow of measures dictated by that spirit, that the time may not be distant, if it has not already come, when an attempt will be made to force upon the Mormons the alternative that I suggested. The following is Mr. Taylor's answer :

“ The question which you propound, as to what we contemplate doing in case we are driven to the wall, and have the alternative presented to us of a surrender of our religious convictions and our civil rights, or another exodus, is one that we can freely answer. We may find it convenient to form colonies outside the boundaries of the United States. But we have never contemplated such a movement as an exodus *en masse* from these Mountain Valleys. The gathering of the people together is one of our fundamental doctrines, and this continent is the place upon which we are commanded to gather. Our future is indissolubly connected with this land. We have had many suggestions about moving on to islands and other places ; but such a movement for us is entirely out of the question. Having these views, where could we move to as a body ? Notwithstanding the many slanders circulated concerning our loyalty, we are profoundly attached to our Republic. We believe that it was founded by the Almighty through chosen instruments, and that the men who framed the Constitution were inspired of God in their labor in framing that instrument. All the liberty that we, or any other reasonable being can ask, can be enjoyed under that great charter, when its guarantees are properly observed. If, with the hope of destroying us, our fellow-citizens continue to trample upon our rights, guaranteed by that instrument, we must continue to bear

it as patiently and heroically as we can, doing all in our power to protest against these wrongs, and to obtain our rights in the courts of our country, and trusting in our God for that deliverance which He has never failed to give us in the past, and which He has promised us for the future. Our destiny is interwoven with the Republic of the United States. For upwards of half a century, we have been led to expect that such attacks as we now witness would be made upon us, and that the people in power would attempt our destruction as a Church and a community. We have expected, also, that the day would yet come, when it would fall to us to uphold the Constitution and constitutional government in this country. We fully believe that this high honor is in store for us, and we are sustained in the midst of our present persecutions by the consciousness that there is a divine providence in all that is taking place, and that our God will so control events that we, as a people, shall be purified and His purposes be brought to pass through the events that are now taking place.

“ Much more might be said upon this subject, but from the above you will learn our views sufficiently to form an idea of our position. We cannot surrender our principles, nor yield our religious convictions ; but shall contend for our rights as American citizens inch by inch as long as God will give us strength and ability to do so. We shall do this, not for ourselves alone, but for humanity, that the principles of civil and religious liberty may be fully maintained on this great American Continent.”

From this extract it will be apparent how deep are the religious convictions of these people. We may call such convictions fanaticism. We may deride the idea of their being specially commanded by the Almighty to gather on this continent, and their being guided by a special Providence, as an absurd assumption. It matters not what we think of their beliefs. The question for the statesman—for the people and Government of the United States—is what these Mormons be-



lieve, and not what we believe. Of their sincerity it would be idle to entertain a doubt. If they believe themselves to have been inspired by God to hold certain religious opinions, they do no more than many other Christians do who regard the framers of our Constitution as inspired in their labor of framing that instrument. In dealing with those whom we choose to consider as "fanatics," the very first and the very last thing to be remembered by any government is that what is called religious fanaticism is a great force; that in many ages of the world it has caused men and women to meet any extremity of suffering rather than surrender their religious convictions. This tenacity of the human soul, by which it adheres to conscientious religious beliefs, challenges, or ought to challenge, the respect of rulers in any country, and more especially in this; and it has been because it has not always been respected, and because what is now foolishly advocated as "the stamping out" process has been resorted to, that religious persecution has left so many dark and lamentable records on the pages of history. Our own history is stained by more than one such record. This affords no reason why the civil power should not prohibit a practice that is injurious to the welfare of society, although that practice is, by those who follow it, founded on and dictated by a sincere religious belief. But it affords ample reason for a careful discrimination between that which the civil power may and that which it may not rightfully punish or control by the hand of the law. This depends in our country upon the limitations imposed by constitutional provisions upon the authority of Government.

You, Mr. Secretary, will not be likely to impute to me any disposition to set up the religious convictions of men in opposition to the law of the land. I have had too extensive and too close an observation of the fallacy of the so-called Higher Law to be for one moment misled by that specious doctrine. I lived and acted through the whole of that period when men of all grades of intellect deluded themselves with

the idea that what they considered the law of God absolved them from obeying the laws regularly enacted by human authority ; when men who aspired to be, and who supposed themselves to be, statesmen, and were so considered, toyed and coquetted with the doctrine of the supposed Higher Law, and thereby contributed their influence to debauch the public mind and to uproot the foundations of civil obedience. In that long warfare between truth and error I bore my part, always maintaining that there is but one measure of the duty of the citizen, namely, to obey the law as enacted by competent authority, whatever his convictions of the moral rightfulness of that law, and to seek redress or relief from its requirements in the courts. It was because multitudes would not see this, but insisted that their interpretation of the law of God absolved them from obeying human laws which they did not like, that a confusion of ideas respecting civil obligation largely contributed to bring about the state of things in certain regions of our land that preceded our civil war.

But this is not the attitude of the Mormons. They are not believers in the Higher Law as a means of absolving them from obedience to the law of the land. Whoever imputes this to them makes a great mistake. All they ask of us is that in the interpretation and administration of our laws we shall not violate their religious freedom and trench upon their rights of conscience. That we have hitherto suffered our laws to be so interpreted and administered as to violate their religious freedom and trench upon their rights of conscience I shall make plain beyond peradventure. I shall show that Mr. Taylor is entirely right in anticipating that he and his fellow-believers will be forced to become the champions of civil and religious liberty in this country if there is not a change of policy ; that this is not an attitude in which they will affect to stand for the purpose of enacting the part of pretended martyrs, but that it is one in which they will inevitably be placed if we go on as we have begun, and that at the same time there is no necessity for such an issue.

The following passage from the report of Governor West calls for a somewhat extended comment :

" The all-absorbing question in this Territory, dominating all others, hurtfully affecting its prosperity, impeding its advancement, and disturbing the quiet and happiness of its people, and the one question of the utmost concern and solicitude to the whole country, *is the attitude of defiance* assumed and maintained by the Mormon people, who probably are five-sixths of the whole population, *to the law of Congress for the suppression of polygamy*, known as the ' Edmunds law.' In all questions affecting the Mormon Church and people, the polygamous and monogamous Mormons make common cause, stand together, and are united. They maintain publicly through their leaders and teachers, in their houses of worship, through their press, and privately in social and business circles, *that the law is infamous*, an interference with and a denial to them of that religious freedom guaranteed to all by the Constitution ; of their right and religious duty to continue in violation of the law their polygamous relations, *and they deny the authority of Congress to regulate and interpose any restrictions as to the marital relation* ; that the obedience which they owe and will cheerfully render to a power higher than any earthly power compels them to exercise their religious rights and privileges in the place of and in violation of the law ; that they are prepared to, and will if required of them, sacrifice their personal comfort, their property, suffer indefinite imprisonment, and surrender life itself *rather than yield and promise obedience to the law and forego the privileges they claim*. The Government can have and hold but one position towards this people, which is of easy statement : Its authority must be respected, its laws must be obeyed."

I have italicised some of the language of this sweeping statement in order to direct attention specially to some of its charges. The very serious indictment which the Governor brings against 150,000 people contains the following charges :

1. That the Mormon people, five-sixths of the whole population of Utah, are in " an attitude of defiance " to a statute of the United States passed " for the suppression of polygamy."
2. That they maintain everywhere and at all times that this law is " infamous ; " " an interference with and a denial to them of that religious freedom guaranteed to all by the Constitution."
3. That " they deny the authority of Congress to regulate and interpose any restrictions as to the marital relations."
4. That they set up their convictions of a law higher and more sacred than human law as the ground for refusing to promise obedience to the law of the land, and for suffering

imprisonment and even death itself rather than forego "the privileges [which] they claim."

I deny the justice and truth of this accusation in every one of its specifications. I repel the charge that the Mormons are in an attitude of defiance to the law for the suppression of polygamy. I deny that they are believers in the Higher Law as a source from which they can claim peculiar "privileges" or immunity from the consequences of what is made an offence by the law of the land. I shall now proceed to prove that the Governor has, unintentionally no doubt, misrepresented them ; that his misrepresentation is a consequence of his having overlooked the distinction between what they admit the civil power can and what they claim it cannot require of them.

In order to make this clear I must now quote two other paragraphs from his report which follow immediately after that above given :

"In the year 1884 a determined move was inaugurated for the enforcement of the law against polygamy, and since that time the territorial officers of Federal appointment charged with the duty have been and continue vigilant and diligent in their efforts to that end. The district and supreme courts have been open and promptly disposing of business before them. While vigor has been shown in the prosecution of offenders, it has been and continues to be the custom of the court, after conviction, to suspend the judgment and allow the convicted party to go free upon his simple promise that he will in the future obey the laws. Of the number convicted up to the 30th of June, 1886, but 7 have given the promise and accepted freedom.

"Seven days after assuming office in the Territory, on the 13th day of May, after consultation with Chief-Justice Zane and District Attorney Dickson, they approving and concurring, I visited the penitentiary, where about 50 of those convicted under the law were imprisoned, and proposed to all who would promise to obey the laws in the future our united efforts to secure from the President their pardon. Not one of them availed himself of this tender, but sent me a respectfully worded communication, signed by all, declining to do so."

If the Governor, when he visited the penitentiary with the approval, be it observed, and the concurrence of the chief-justice and the district attorney, put to a single convict who was there undergoing imprisonment because he had been convicted of bigamy in having married more than one wife, the question whether he would obey the law and not repeat that offence, I take leave to doubt whether he received a

negative answer from a single one of them, or from the whole collectively. If, as a condition of receiving a pardon from the President, he put to them or any of them the question whether they would promise to obey the laws in the future, in the sense of accepting the construction given by the territorial courts to the section of the statute which punishes "cohabitation with more than one woman," without an effort to obtain a revision of that construction by the Supreme Court of the United States, I think it very likely that they one and all refused to comply with such a condition of obtaining a pardon. I read their formal reply to the Governor, and I know that this was what they understood was required of them, and I know, too, that they would not have been MEN if they had submitted to it. The fact that the chief-justice and the district attorney concurred in the Governor's visit and his offer shows that although not present they were parties to this proceeding. They had nothing else to offer to the prisoners who had been convicted of unlawful cohabitation. To these persons, the requirement was that they should promise "to obey the laws" as they have been construed by the chief-justice and his brethren; and while I shall not say that this construction is an "infamous" one, I shall say that it is forced, artificial, unnatural, and oppressive; and that to require citizens of the United States, who happen to dwell in a Territory, to promise to obey the laws, when so construed, while the door of access to the Supreme Court of the United States is closed and kept closed against them, when the offence is a new one, when it is couched in one ambiguous word, and when the construction of the lower courts requires of them a renunciation of religious and moral duties, is a cruel proceeding. Torture by the rack, as a means of extorting a renunciation of religious beliefs, was once practised, and is justly held to have been "infamous." This was torture by physical pain. There may be a moral torture that should not less be condemned. When a man is in the penitentiary of a Territory,

suffering imprisonment for an offence against the United States that is entirely new, to tell him that the condition on which he can have the President's pardon is that he shall promise to obey the laws as they are construed by a set of local judges, over whose decisions there is no appellate jurisdiction, and when obedience to the law, as so construed, requires him to renounce religious and moral duties to others who are dependent on him, is to subject him to a moral torture worse than any physical pain to which the human frame can be subjected. I say that the men who rejected this offer would not have been MEN if they had embraced it, and I honor them for their refusal. This, Mr. Secretary, is strong language. I proceed to its justification.

The Governor states that he saw and conversed with about 50 "of those convicted under the law," and that he proposed a certain condition to "all," namely, that they "would promise to obey the laws in the future." He does not say of what particular offence these fifty persons had been convicted. The statute covers two offences: One is bigamy, or the having married more than one wife; the other is "cohabiting with more than one woman." They are distinct offences, separately punished. The one requires no special interpretation. A man is a bigamist who has married more than one woman. The other offence requires very careful judicial interpretation, for Congress has not defined it. It is described by the single word "cohabit," which means to live with in the same place or in the same tenement; but the territorial judges say that it means to associate with in any way or manner, no matter in what place.

Now, what was the state of things when Governor West visited the penitentiary? There were a few convicts who had been convicted of bigamy and sentenced for that offence. But the great majority had been convicted of unlawful "cohabitation;" and, of these, many, and notably "Apostle Snow," had been convicted upon a state of facts which showed that the whole association, or continuance of per-

sonal relations, between the man and all of his wives but one had, since the passage of the Edmunds act, been confined to looking after their support in sickness and in health, and caring for their children, without dwelling in the same house, or, in some cases, in the same town.

No public question has arisen in my time on which the general public have so little means for forming safe opinions as they have on what is called the "Mormon question." To most persons the practise of polygamy is all that is supposed to be involved in this matter. Very few of the most intelligent people have any comprehension of the problem in statesmanship and jurisprudence which has come about in consequence of the omission of the Federal Government to deal with polygamy in the Territories at an earlier period, when the whole question was much more simple than it is now ; when there were fewer persons to be affected, and when there had not come into existence many thousands of offspring of polygamous marriages, now constituting about one-fifth of the whole population of Utah. Very few people in the country at large understand the circumstances which have caused intelligent and virtuous women to enter into plural marriage, a connection that is just as voluntary as any other form of the marriage relation. The relation of plural wives to one husband is just as holy and innocent, according to the Mormon religious belief, as the relation of marriage between one woman and one man. No one can understand this peculiar moral phenomenon without referring to the religious belief of the people called Mormons, and no one can perceive the true limits to public interference with these relations without knowing what the religious belief of these people is, and how it originated. This is the first time that a public question has arisen since the adoption of the first amendment of the Federal Constitution, in which the meaning and operation of the religious liberty guaranteed by that amendment have come into legislative and judicial consideration. The question of slavery in the Territories of the United States, the

vexatious question of our ante-bellum period, was a purely civil and political matter not complicated by the element of religious belief; for, although some of the defenders of African slavery undertook to justify it on what they deemed religious grounds, it was never necessary for the Federal Government to recognize that justification. It is far otherwise in regard to polygamy in the Territories as a form of the marriage relation; for although it is undoubtedly competent to the civil power to regulate the marriage relation wherever it has a plenary legislative authority, yet the institution of marriage, whether monogamous or polygamous, has in it a religious element, and by the accepted ideas of all persons professing in any form the Christian religion, this institution of marriage has a religious sanction. To the extent that the marriage relation is not recognized as having a religious sanction, to the extent that it is regarded as a mere civil contract, the bonds of matrimony are the more loosely assumed and the more readily dissolved; and although the civil power, in legislation, can deal with this social relation only or chiefly as one of a civil nature, yet it is always necessary to keep in view the fact that the parties who enter into this relation may, and for the most part do, recognize it as having a religious sanction and a religious origin. It may therefore happen, and in regard to these Mormons it has happened, that there is one domain of personal conduct in which the civil power can rightfully dictate what shall be prohibited because it is injurious to the welfare of society, while on the other hand there is a much wider domain of personal conduct in which there can be no interference by the civil power without trenching on the rights of conscience which are secured by an express constitutional provision. To draw the line between that individual conduct which the civil power may prohibit or punish, and that which it may not, is not attended with insuperable difficulties, but it has now become, in the case of these Mormons, imperatively necessary.



For example, in certain cases that came before the Supreme Court of the United States at its last term, under the statute known as the "Edmunds act," enacted by Congress in 1882, the highest appellate tribunal in the country was called upon to define the kind of conduct which the civil power can, and that which it cannot, punish with fine and imprisonment. The act of 1882, designed to amend an act passed in 1862—which earlier law made polygamy bigamy, and punished it as such—contained a further provision punishing any man who should "cohabit with more than one woman." No legislative definition of the word "cohabit" was given; it was left to judicial interpretation. Ordinarily, cohabitation of a man with more than one woman, in a penal statute, would be understood by lawyers and publicists as the dwelling together in a habit of sexual intercourse, or in the ordinary relations of husband and wife. But in *Angus M. Cannon's* case, which was the first one that came before the Supreme Court, it was held that the fact of sexual relations was not necessary to constitute the offence; that the offence was complete when a man dwelt under the same roof with two women whom he claimed to be his wives, ate at the separate table of each about one-third of the time, and had no other home or dwelling place; and that it was not necessary to inquire into the privacy of his sexual relations with either of them. Upon this construction of the word "cohabit," the conviction of Cannon was affirmed by the Supreme Court of the United States last December, and a mandate was accordingly sent down to the territorial court directing its judgment to be carried out. But in April last three cases of "*Apostle Snow*" came before the Supreme Court of the United States on writs of error. Snow had been convicted in the District Court of Utah on a state of facts very different from the facts in Cannon's case; the Supreme Court of the Territory had affirmed the conviction, and Snow was and is now serving out accumulated terms of imprisonment in the penitentiary imposed by the sen-

tence. He is a man upwards of 70 years of age, of blameless life, in all respects a man of education and culture, and one of the first citizens of the Territory. It appeared in evidence that he had seven wives then living, to whom he had been married at different times in the course of the past forty years. Six of these marriages took place before the act of 1862 had made polygamy bigamy, and the seventh took place eleven years before the act of 1882 created the new offence of cohabitation with more than one woman. Before the act of 1882 went into operation, Mr. Snow had dwelt exclusively, in every sense of cohabitation, with his youngest wife and her children, in a separate house which he built for her; his other and older wives, some of them quite elderly women, lived in separate houses with the children of each of those who had children. Mr. Snow's whole association with any of the wives, excepting the youngest, consisted in occasional visits to them, always in the day-time and in the presence of any one else who happened to be in the house, continuing to support and care for them, and looking after the welfare of their children, whose father he was. This state of things continued through the whole of the several periods for which he was indicted in three separate indictments for unlawful cohabitation with more than one woman. He was convicted because he spoke of the other women as his "wives," when, according to his faith and theirs, he had married them for time and eternity, and because the territorial court, by a forced construction of the statute, instructed the jury, composed exclusively of "Gentiles," that they were to presume cohabitation although the fact might be that he had no sexual intercourse with any wife but the one in whose house he dwelt. It is manifest that this conviction under this artificial construction of the law could not take place without violating his religious freedom, because his whole conduct toward all the women evinced plainly that it was dictated by his religious belief in his eternal relation to them as one of religious and moral duty, and because it was

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